

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STANDARD INSURANCE COMPANY, an
Oregon corporation,

Plaintiff,

v.

MELINA LaBREE, nka Melina Dawn
Limbaugh, individually; MICHELLE
VANDENHAAK, individually and as
Executrix of the Estate of RANDOLPH G.
LaBREE; and RAYMOND LaBREE,
individually,

Defendants.

MICHELLE VANDENHAAK, individually
and as Executrix of the Estate of
RANDOLPH G. LaBREE; and RAYMOND
LaBREE, individually,

Third-Party Plaintiffs,

v.

LONGVIEW FIBRE COMPANY,

Third-party
Defendant.

Case No. C06-5113RJB

ORDER

This matter comes before the Court on Plaintiff's Motion for Summary Judgment on Interpleader (Dkt. 10-1) and Defendant Melina LaBree, nka Melina Dawn Limbaugh's Motion for Summary Judgment on Interpleader (Dkt. 12). The Court has reviewed all documents filed in support of and in opposition to

1 these Motions, has reviewed the entire file, and is fully advised.

2 **I. FACTS**

3 **A. PROCEDURAL HISTORY**

4 Interpleader Plaintiff, Standard Insurance Company (“Standard Insurance”) filed this action on
5 February 27, 2006. Dkt. 1. Standard Insurance deposited \$155,000 in the registry of the Court on March
6 3, 2006. Dkt. 4. The deposit represents decedent Randolph LaBree’s life insurance policy proceeds. *Id.*
7 Interpleader Defendants, decedent’s ex-wife, Melina LaBree, nka Melina Dawn Limbaugh (“Limbaugh”),
8 and his children, Michelle Vandenhaak and Michael Raymond LaBree, dispute who is entitled to the life
9 insurance proceeds. Dkts. 9 and 15. On April 11, 2006, Interpleader Defendant Limbaugh filed an
10 Answer. Dkt. 9. Standard Insurance filed a Motion for Summary Judgment on May 9, 2006. Dkt.10.
11 Limbaugh filed a Response and Cross Motion for Summary Judgment on May 11, 2006. Dkt. 12. On
12 May 12, 2006, Interpleader Defendants Michelle Vandenhaak, Michael Raymond LaBree, and Randolph
13 LaBree’s estate (“children and the estate”) filed an Answer and Third Party Complaint adding Longview
14 Fibre Company (“Longview Fibre”), Randolph LaBree’s employer, as a Third Party Defendant. Dkt. 15-1.
15 William L. Dowell, Attorney at Law, filed a Waiver of Service on behalf of Longview Fibre on May 12,
16 2006. Dkt. 16. In the interest of Due Process, the Motions for Summary Judgment were re-noted for July
17 21, 2006 in order to provide Longview Fibre an opportunity to be heard. Dkt. 34. Longview Fibre filed
18 an Answer to the Complaint and a Response to the Motions for Summary Judgment on July 12, 2006.
19 Dkts. 36 and 37.

20 **B. BACKGROUND**

21 Standard Insurance issued Group Life Insurance Plan No. 613258-A (“the plan”) to Longview,
22 effective on January 1, 1993, and as amended effective on January 1, 2000. Dkts. 25-2 and 25-3.
23 Decedent was an employee of Longview Fibre and was insured under the plan in the sum of \$155,000.
24 Dkt. 1.

25 Decedent married Limbaugh on May 28, 2003. Dkt. 29-1, at 2. On June 6, 2003, decedent
26 executed Form No. F-3545-4, entitled “Longview Fibre Company Life Insurance Change of Beneficiary
27 Card,” listing Limbaugh as wife and 100% primary beneficiary, with an effective date of change of May 28,
28 2003. Dkt. 11-2, at 1-2. On March 16, 2005, decedent and Limbaugh’s marriage was dissolved. Dkt. 25-

1 6, at 2-9.

2 According to the children and the estate, on June 14, 2005, decedent went to Longview Fibre, to
3 complete necessary paperwork before retirement. Dkt. 25-1. They state that Longview Fibre was given a
4 copy of the decree dissolving decedent's and Limbaugh's marriage. Dkt. 25-1, at 2. The record contains
5 several forms, signed by decedent, and dated June 14, 2005. Dkts. 29-3 to 29-6. One, entitled "Notice of
6 Change of Beneficiary Employees' Pension Plan of Longview Fibre Company," names his daughter
7 Michelle Vandenhaak, as beneficiary. Dkt. 29-6, at 2. That form stated:

8 In accordance with provisions of the Plan, I hereby revoke any designation of beneficiary
9 previously made by me, and subject to my right to change my beneficiary as provided in the
10 Plan, I hereby designate the following, if living, as the beneficiary(ies) to receive any
11 payments to which my beneficiary(ies) may be entitled under the Plan in the event of my
12 death prior to or after by retirement. Beneficiaries, if more than one, shall share equally
13 unless otherwise designated below.

14 *Id.* The record contains declarations from three witnesses, all who knew decedent and state that he told
15 them he did not intend for Limbaugh to receive any of his money, and that he had "taken her name off his
16 benefits at Longview." Dkts. 22, 23 and 24. Decedent died on June 24, 2005. Dkt. 29-1, at 2.

17 According to Standard Insurance's Interpleader Complaint, shortly after decedent's death, the
18 children and estate contacted it and indicated that they were entitled to the life insurance proceeds. Dkt. 1-
19 1, at 4. Limbaugh also informed Standard Insurance that she was claiming the proceeds as the named
20 beneficiary. Dkt. 1-1, at 3. The children and the estate wrote Standard Insurance, demanding payment and
21 indicated that it may have some liability, pursuant to 29 U.S.C. § 1132. Dkt. 11-2, at 3-5. Standard
22 Insurance wrote the parties twice and encouraged them to settle the matter. Dkt. 11-2, at 6-9. This action
23 followed.

24 **C. PENDING MOTIONS**

25 Standard Insurance moves for Summary Judgment arguing that: 1) it should be dismissed as a
26 party from this action as the Interpleader Plaintiff because it is unable to determine which of the
27 defendants is due the life insurance benefits, and it has deposited the life insurance proceeds with the Clerk
28 of the Court, and 2) it is entitled to attorney's fees and costs. Dkt. 10-1.

Limbaugh does not oppose the dismissal of Standard Insurance, but argues that it is not entitled to
attorney's fees and costs due to the fact that there is no "genuine doubt" as to who is entitled to the life

1 insurance benefits citing *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). Dkt. 12. The children and the estate
 2 do not oppose dismissal of Standard Insurance and argue that the award of fees and costs is appropriate.
 3 Dkt. 21. Longview Fibre does not oppose the dismissal of Standard Insurance, and does not address the
 4 issue of the award of fees and costs. Dkt. 37.

5 Limbaugh makes a Cross Motion for Summary Judgment arguing that: 1) the plan is subject to the
 6 Employee Retirement Income Security Act (“ERISA”), 2) under ERISA, the fiduciary of the plan shall pay
 7 the designated beneficiary, 3) she was the named beneficiary at the time of decedent’s death, and 4) so she
 8 is entitled to the life insurance benefits. *Id.* The children and the estate oppose Limbaugh’s motion for
 9 summary judgment arguing that: 1) there are issues of fact as to whether Limbaugh was the named
 10 beneficiary at the time of decedent’s death, 2) the doctrine of substantial compliance applies, and 3)
 11 decedent took steps to remove his ex-wife as beneficiary. Dkt. 21. Longview Fibre argues that
 12 consideration of Limbaugh’s cross motion should be stayed, and the money not distributed, until after the
 13 Court resolves the third-party claim brought against it by the children and the estate. Dkt. 37. Longview
 14 Fibre takes no position as to who is the proper beneficiary. *Id.* Limbaugh did not reply.

15 **II. DISCUSSION**

16 **A. SUMMARY JUDGMENT STANDARD**

17 Summary judgment is proper only if the pleadings, depositions, answers to interrogatories, and
 18 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material
 19 fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56 (c). The moving
 20 party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
 21 showing on an essential element of a claim in the case on which the nonmoving party has the burden of
 22 proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of fact for trial
 23 where the record, taken as a whole, could not lead a rational trier of fact to find for the non moving party.
 24 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)(nonmoving party must
 25 present specific, significant probative evidence, not simply “some metaphysical doubt.”). *See also*
 26 Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence
 27 supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the
 28 truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific*

1 *Electrical Contractors Association*, 809 F.2d 626, 630 (9th Cir. 1987).

2 The determination of the existence of a material fact is often a close question. The court must
 3 consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a
 4 preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elect. Service Inc.*,
 5 809 F.2d at 630. The court must resolve any factual issues of controversy in favor of the nonmoving party
 6 only when the facts specifically attested by that party contradict facts specifically attested by the moving
 7 party. The nonmoving party may not merely state that it will discredit the moving party’s evidence at trial,
 8 in the hopes that evidence can be developed at trial to support the claim. *T.W. Elect. Service Inc.*, 809
 9 F.2d at 630 (relying on *Anderson, supra*). Conclusory, non specific statements in affidavits are not
 10 sufficient, and “missing facts” will not be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S.
 11 871, 888-89 (1990).

12 **B. STANDARD INSURANCE’S MOTION FOR SUMMARY JUDGMENT (Dkt. 10)**

13 1. Dismissal of Standard Insurance

14 Fed. R. Civ. Pro. 22 provides:

15 Persons having claims against the plaintiff may be joined as defendants and required to
 16 interplead when their claims are such that the plaintiff is or may be exposed to double or
 17 multiple liability. It is not ground for objection to the joinder that the claims of the several
 18 claimants or the titles on which their claims depend do not have a common origin or are not
 19 identical but are adverse to and independent of one another, or that the plaintiff avers that
 the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant
 exposed to similar liability may obtain such interpleader by way of cross-claim or
 counterclaim. The provisions of this rule supplement and do not in any way limit the joinder
 of parties permitted in Rule 20.

20 Standard Insurance’s Motion for Summary Judgment should be granted and it should be dismissed
 21 from this action. The record indicates that Standard Insurance was faced with the possibility of being
 22 exposed to double or multiple liability due to conflicting claims to the \$155,000 life insurance proceeds.
 23 Dkts. 9 and 15. None of the parties object to its dismissal. Dkt. 12, at 5; Dkt. 21, at 2; Dkt. 37, at 2.

24 2. Award of Attorney’s Fees and Costs

25 The availability of attorneys' fees for interpleader plaintiffs in ERISA cases “recognizes that by
 26 bringing the action, the plaintiff benefits all parties by promoting early litigation on the ownership of the
 27 fund, thus preventing dissipation.” *Trustees of the Directors Guild of America v. Tise*, 234 F.3d 415, 426
 28 (9th Cir. 2000)(*internal citation omitted*). Attorneys’ fees awards are properly limited to those fees that

1 are incurred in filing the action and pursuing the plan's release from liability, not in litigating the merits of
2 the adverse claimants' positions, because the interpleader plaintiff is disinterested in the ultimate result. *Id.*
3 "Compensable expenses include, for example, preparing the complaint, obtaining service of process
4 on the claimants to the fund, and preparing an order discharging the plaintiff from liability and dismissing it
5 from the action." *Id.* at 426-27.

6 Standard Insurance seeks \$4,841.00 in attorney's fees and costs. Dkt. 10-1, at 5. The children and
7 the estate do not oppose the award of attorney's fees and costs to Standard Insurance. Dkt. 21, at 2.
8 Longview Fibre takes no position regarding such an award. Limbaugh argues attorney's fees and costs
9 should not be awarded to Standard Insurance because there is no doubt that she is the beneficiary. Dkt.
10 12. As stated below, at this stage in the case, there is doubt as to the proper beneficiary under the plan.
11 Consequently, Standard Insurance is entitled to an award of reasonable attorney's fees and costs. To that
12 end, counsel for Standard Insurance, John E. Pollino, submitted a statement of attorney's fees and costs.
13 Dkt. 11-2, Ex. D. The statement contains initials of unknown people (the court is unable to discern
14 whether these parties are attorneys or other staff), lists the hourly grand total at \$5,541.00, and provides
15 no guidance at how Standard Insurance arrived at the figure of \$4,841.00. Because the fee applicant bears
16 the burden of documenting the appropriate hours expended in the litigation and must submit evidence in
17 support of those hours worked, *Gates v. Gomez*, 60 F.3d 525, 534-35 (9th Cir. 1995), Standard Insurance
18 should be ordered to provide a further submission: 1) identifying each party for which it is requesting
19 attorney's fees, 2) identifying costs for which it is seeking reimbursement, and 3) explaining how it arrived
20 at the figure of \$4,841.00. Standard Insurance should also address the following factors which are used in
21 determining whether a claim for attorney's fees is reasonable: (1) the time and labor required, (2) the
22 novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly,
23 (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary
24 fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the
25 circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability
26 of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the professional
27 relationship with the client, and (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d
28 67, 69-70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951 (1976). These considerations are consistent with

1 Washington Rules of Professional Conduct 1.5. This briefing will be due no later than August 21, 2006,
 2 responses, if any, are due on August 28, 2006, and a reply, if any, is due August 31, 2006. The motion for
 3 reasonable attorney's fees should be re-noted for September 1, 2006.

4 **C. LIMBAUGH'S MOTION FOR SUMMARY JUDGMENT (Dkt. 12)**

5 Under ERISA, the fiduciary administers the plan in accordance with the documents and instruments
 6 governing the plan, and makes payment to a beneficiary who is designated by a participant, or by the terms
 7 of [the] plan. *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001) (citing 29 U.S.C. § 1104(a)(1)(D) and §
 8 1002(8))(internal quotations omitted); *Metropolitan Life Ins. Co. v. Parker*, 436 F.3d 1109, 1113 (9th
 9 Cir. 2006). Beyond ERISA's general requirement that a fiduciary administer the plan in accordance with
 10 the plan documents, ERISA is silent on how plan administrators are to determine the proper beneficiary in
 11 situations where they are presented with conflicting or ambiguous designations. *Parker* at 1113.

12 Limbaugh's cross Motion for Summary Judgment should be denied without prejudice. Limbaugh
 13 has failed to show, at this stage in the case, that she is entitled to a judgment as a matter of law. Her
 14 argument that *Egelhoff* applies to this matter is misplaced. In that case, the issue was whether a
 15 Washington State statute, requiring that after a dissolution of a marriage, the former spouse's interest in
 16 "non-probate assets," (including life insurance) was automatically revoked, violated the ERISA's
 17 preemption provision. *Id.* Unlike in *Egelhoff*, this case does not appear to involve ERISA's preemption
 18 provision or RCW § 11.07.010.

19 Longview Fibre argues that Limbaugh's motion is premature, and that "any decision on the
 20 appropriate beneficiary should wait until all legal issues concerning the applicable beneficiary forms are
 21 resolved." Dkt. 37, at 2. The children and the estate turn to the merits of the case and argue that the
 22 doctrine of substantial compliance should apply citing *Bank of America Pension Plan v. McMath*, 206 F.3d
 23 821 (9th Cir. 2000). Dkt. 21, at 7-12. In some circumstances, the Ninth Circuit has held that courts do
 24 "have discretion to employ the equitable doctrine of substantial compliance, which is intended to
 25 circumvent harsh results 'engendered by a formalistic, overly technical adherence to the exact words of the
 26 change of beneficiary provision in a given policy.'" *Bank of America Pension Plan v. McMath*, 206 F.3d
 27 821 (9th Cir. 2000). The children and the estate argue that if the doctrine of substantial compliance is
 28 applied, at a minimum, there are issues of fact as to whether decedent changed beneficiaries on June 14,

1 2006. *Id.*

2 Considering the procedural posture of the case, the approach advocated by Longview Fibre is
3 appropriate. The record is insufficient to consider this motion on the merits. Limbaugh's Cross Motion
4 for Summary Judgment should be denied without prejudice. Moreover, it is unclear if the record contains
5 a complete copy of the plan in effect at the time of decedent's death. It is also unclear whether it is
6 appropriate for the Court to make the beneficiary determination (as in *Parker*) or whether the
7 determination should first be made by the plan administrator. Accordingly, remaining parties should show
8 cause, within one month of this order, why this Court should make the beneficiary determination where it
9 appears no designation has been made by the plan administrator.

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12 **III. ORDER**

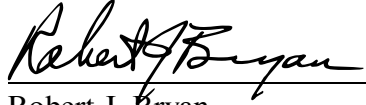
13 Therefore, it is hereby,

14 **ORDERED** that:

- 15 • Plaintiff's Motion for Summary Judgment on Interpleader (Dkt. 10-1) is **GRANTED AND RE-**
16 **NOTED for SEPTEMBER 1, 2006** to consider the amount of attorney's fees and costs due
17 Standard Insurance. Standard Insurance is dismissed from this action and awarded reasonable
18 attorney's fees and costs. Standard Insurance will brief the Court by August 21, 2006, in
19 accordance with this order, responses, if any, are due on August 28, 2006, and a reply, if any is due
20 August 31, 2006.
- 21 • Defendant Melina LaBree, nka Melina Dawn Limbaugh's Motion for Summary Judgment on
22 Interpleader (Dkt. 12) is **DENIED WITHOUT PREJUDICE**.
- 23 • Remaining parties are ordered, within one month of this order, to show cause, if any they have, in
24 writing, why the Court should determine the proper beneficiary when the plan administrator has
25 made no such determination.
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1 The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of record
2 and to any party appearing *pro se* at said party's last known address.

- 3 • DATED this 8th day of August, 2006.

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6 Robert J. Bryan
United States District Judge
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